



24 CFR Parts 14, 17, 20, 26, 28, 30, 81, 103, 180, and 570

[Docket No. FR-6285-F-01]

HUD Office of Hearings and Appeals

AGENCY: Office of Hearings and Appeals, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations regarding HUD's Office of Hearings and Appeals (OHA). This rule makes conforming changes to HUD regulations to reflect the office's proper title, to remove references to the terminated HUD Board of Contract Appeals, and to add a reference to recent Supreme Court precedent regarding the proper appointment procedure for administrative law judges and administrative judges.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: J. Jeremiah Mahoney, Chief Administrative Law Judge, Office of Hearings and Appeals, Department of Housing and Urban Development, 451 7th Street, S.W., Room B-133, Washington, DC 20410. The telephone number of the Office of Hearings and Appeals is 202-254-0000 (not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The HUD Office of Hearings and Appeals (OHA) is an independent judicial office within HUD's Office of the Secretary. The OHA is headed by the Chief Administrative Law Judge, who supervises the judges and the professional and administrative support staffs.

Each Administrative Judge and each Administrative Law Judge is appointed by the HUD Secretary as an Officer of the United States. The Judges also may be appointed through

contracts with other U.S. Department heads and Federal Agency heads to conduct hearings and issue decisions on matters before their respective agencies.

The OHA Judges function as independent and impartial triers of fact responsible for presiding over adversarial hearings, and adjudicating appeals, based upon alleged violations of Federal statutes or their implementing regulations.

Hearing procedures are established by agency regulations and are guided by the rules applicable to trials in a U.S. district court. In each case, the judge makes an impartial decision based upon the law, and the facts established by the evidence.

II. This Final Rule

This final rule updates HUD's regulations in 24 CFR parts 14, 17, 20, 26, 28, 30, 81, 103, 180, and 570, to reflect that the office's title is "Office of Hearings and Appeals," as changed by the HUD Secretary. These HUD regulations contain outdated references to the "Office of Administrative Law Judges," "Office of Appeals," and "Board of Contract Appeals." This final rule updates HUD regulations throughout Title 24 to reflect these changes. While this final rule updates those sections of Title 24 that use outdated language that also implicate the hearing procedures at 24 CFR part 180, there are other sections of Title 24 that rely on the hearing procedures at 24 CFR part 180, which do not require the conforming amendments made by this final rule, including 24 CFR parts 1, 3, 6, 8, and 146. These sections of Title 24 implement federal civil rights statutes, which continue to rely on 24 CFR part 180 for administrative enforcement procedures.

OHA was formed at the end of 2007 after the HUD Board of Contract Appeals, along with other agencies' boards of contract appeals, was consolidated into the Civilian Board of Contract Appeals. The Civilian Board of Contract Appeals is an independent tribunal housed within the U.S. General Services Administration, pursuant to section 847 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163, approved January 6, 2006). OHA was established to merge the non-procurement contract dispute functions previously performed by

the HUD Board of Contract Appeals with the HUD Office of Administrative Law Judges. OHA remained as an independent office within the Office of the Secretary. This final rule will not change any existing OHA functions, but will avoid internal or external confusion as to its name, composition, location, and contact information. This final rule also removes an obsolete reference to a “hearing examiner” in 24 CFR 14.50, because this is a former title for Administrative Law Judges that is no longer used in the Federal Government.

This final rule also adds language to HUD’s regulations in 24 CFR 20.1 to explain that Administrative Law Judges are appointed by the HUD Secretary as Officers of the United States, pursuant to the Appointments Clause of the United States Constitution. The HUD Administrative Law Judges have also been appointed by other U.S. Department heads and Federal Agency heads to conduct hearings and issue decisions on matters before their respective agencies. The requirement of U.S. Department and Federal Agency heads to appoint Administrative Law Judges was recently recognized by the Supreme Court in *Lucia v. SEC*, 585 U.S. ____ (2018). HUD is adding this language to its regulations in response to this.

Finally, this final rule clarifies the required qualifications for both Administrative Judges and Administrative Law Judges at 24 CFR 20.3(d) in accordance with the Office of Personnel Management’s requirements and regulations at 5 CFR part 930. All of HUD’s Administrative Judges and Administrative Law Judges are currently actively licensed attorneys at law.

III. Justification for Final Rulemaking

Generally, HUD publishes a rule for public comment before publishing a rule for effect, in accordance with HUD’s regulations on rulemaking at 24 CFR part 10. However, § 10.1 allows for omission of notice and public comment in cases of statements of policy, interpretive rules, rules governing HUD’s organization or internal practices, if the Department determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In this case, HUD has determined that prior public comment is unnecessary because this rule is exclusively concerned with fixing outdated references

concerning OHA. Specifically, the regulatory amendments made by the final rule are technical and non-substantive in nature, since they are limited to updating the terminology used in HUD's regulations governing administrative hearings and appeals and adding language in accordance with Supreme Court precedent.

IV. Findings and Certifications

Executive Orders 12866 and 13563, Regulatory Planning and Review

Under Executive Order 12866 (Regulatory Planning and Review) (58 FR 51735), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order.

Executive Order 13563 (Improving Regulations and Regulatory Review) (76 FR 3821) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. As discussed above in this preamble, this final rule updates outdated terminology and its changes are technical and non-substantive in nature. HUD determined that this rule was not significant under Executive Order 12866 and Executive Order 13563.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) (64 FR 43255) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not

impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)¹ requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.² However, the UMRA applies only to rules for which an agency publishes a general notice of proposed

¹ 2 U.S.C. 1532.

² 2 U.S.C. 1535.

rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

List of Subjects

24 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

24 CFR Part 17

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

24 CFR Part 20

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies).

24 CFR Part 26

Administrative practice and procedure.

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and community development, Loan programs-housing and community development, Mortgage insurance, Penalties.

24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs-education, Grant programs-housing and community development, Guam, Indians, Loan programs-housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 14, 17, 20, 26, 28, 30, 81, 103, 180, and 570 to read as follows:

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

2. In § 14.50, revise the definition of “Adjudicative officer” to read as follows:

§ 14.50 Definitions.

* * * * *

Adjudicative officer. The Administrative Law Judge, Administrative Judge of the HUD Office of Hearings and Appeals, or other officer designated by the Secretary, who presided at the adversary adjudication.

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PART 17—ADMINISTRATIVE CLAIMS

3. The authority citation for part 17 continues to read as follows:

Authority: 28 U.S.C. 2672; 31 U.S.C. 3711, 3716-18, 3721, and 5 U.S.C. 5514; 42 U.S.C. 3535(d).

4. In part 17:

a. Remove “Office of Appeals” and add in its place “Office of Hearings and Appeals” wherever it appears; and

b. Remove “OA” and add in its place “OHA” wherever it appears.

5. In § 17.63, remove the definition of “Office of Appeals or OA” and add a definition for “Office of Hearings and Appeals” in alphabetical order.

The addition reads as follows:

§ 17.63 Definitions.

* * * *

Office of Hearings and Appeals or *OHA* means the HUD Office of Hearings and Appeals.

* * * *

PART 20—OFFICE OF HEARINGS AND APPEALS

6. The authority citation for part 20 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

7. Revise § 20.1 to read as follows:

§ 20.1 Establishment of the Office of Hearings and Appeals.

There is established in the Office of the Secretary the Office of Hearings and Appeals. The Administrative Law Judges and the Administrative Judges within the Office of Hearings and Appeals are appointed by the Secretary of the Department pursuant to the Appointments Clause of the United States Constitution.

8. In § 20.3, revise paragraphs (c) and (d) to read as follows:

§ 20.3 Location, organization, and officer qualifications.

* * * *

(c) *Organization.* The Office of Hearings and Appeals is supervised by the Chief Administrative Law Judge and a Deputy Chief Administrative Law Judge

(d) *Officer qualifications.* (1) The Administrative Judges of the Office of Hearings and Appeals shall be attorneys at law actively licensed by any state, commonwealth, territory, or the District of Columbia.

(2) The Administrative Law Judges of the Office of Hearings and Appeals shall be qualified in accordance with the Office of Personnel Management regulations at 5 CFR part 930.

9. In § 20.5, revise the section heading and in the first sentence remove “Office of Appeals” and add in its place “Office of Hearings and Appeals”.

The revision reads as follows:

§ 20.5 Jurisdiction of Office of Hearings and Appeals.

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PART 26—HEARING PROCEDURES

10. The authority citation for part 26 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

§ 26.2 [Amended]

11. In § 26.2, in paragraph (a), remove the words “Office of Appeals”.

§ 26.9 [Amended]

12. In § 26.9, in paragraph (a)(1), remove “Office of Appeals” and add in its place “Office of Hearings and Appeals”.

§ 26.29 [Amended]

13. In § 26.29, in the definition of “Docket Clerk”, remove “Office of Administrative Law Judges” and add in its place “Office of Hearings and Appeals”.

PART 28 – IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

14. The authority citation for part 28 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812; 42 U.S.C. 3535(d).

§ 28.25 [Amended]

15. In § 28.25, in paragraph (a), remove “Office of Administrative Law Judges” and add in its place “Office of Hearings and Appeals”.

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

16. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q-1, 1703, 1723i, 1735f-14, and 1735f-15; 15 U.S.C. 1717a; 28 U.S.C. 1 note and 2461 note; 42 U.S.C. 1437z-1 and 3535(d).

17. In part 30, remove “Office of Administrative Law Judges” and add in its place “Office of Hearings and Appeals” wherever it appears.

PART 81—THE SECRETARY OF HUD’S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

18. The authority citation for part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 et seq., 1716-1723h, and 4501-4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601-3619.

19. In part 81, remove “Office of Administrative Law Judges” and add in its place “Office of Hearings and Appeals” wherever it appears.

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

20. The authority citation for part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600-3619.

21. In part 103, remove “Office of Administrative Law Judges” and add in its place “Office of Hearings and Appeals” wherever it appears.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

22. The authority citation for part 180 continues to read as follows:

Authority: 28 U.S.C. 1 note; 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601-3619, 5301-5320, and 6103.

23. In part 180:

a. Remove “Director of the Office of Hearings and Appeals” and add in its place “Chief Administrative Law Judge” wherever it appears; and

b. Remove “Office of ALJs” and add in its place “Office of Hearings and Appeals” wherever it appears.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

24. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

§ 570.496 [Amended]

25. In § 570.496, in paragraph (d)(1)(iii), remove “Office of Administrative Law Judges” and add in its place “Office of Hearings and Appeals” wherever it appears.

Dated: February 8th, 2022.

Marcia L. Fudge,
Secretary

[Billing Code: 4210-67]

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